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December 29, 1983

BY HAND

Honorable Robert W. Sweet
United States District Judge
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: Universal City Studios, Inc. v.
Nintendo Co. Ltd. and Nintendo
of America, Inc., 82 Civ. 4259
(RWS)

Dear Judge Sweet:

In the concluding paragraph of Your Honor's Opinion and Order of December 22, 1983 granting defendants' motion for a summary judgment, the Order recites that "the action is dismissed and the Clerk is ordered to enter judgment to that effect." A check of the Clerk's office this morning confirms that no judgment implementing the Order has yet been entered. Before one is, however, I wish to alert the Court to what I perceive as a potential for confusion over what is intended by Your Honor's direction that the action be dismissed. The problem stems from the fact that the Order omits reference to the pendency of various counterclaims by Nintendo against Universal, which were not before the Court on the summary judgment motion and which for that reason are still "active." Since these claims still remain to be litigated I am concerned, on behalf of plaintiff, that the form of judgment that is intended properly reflects the Court's intention as to the matter of the judgment's appealability. If Universal is to have the option of taking an appeal of its claims against Nintendo at this time, Rule 54(b) of the Fed. R. Civ. P. specifies that the Court may direct the entry of a final

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judgment "only upon an express determination that there is no just reason for delay and upon express direction for the entry of judgment * * *." On behalf of plaintiff, I would urge the Court to direct the entry of a judgment permitting Universal to take an immediate appeal, if it desires to do so, by providing the appropriate Rule 54(b) declaration. This would obviate any potential misunderstanding over the intent of the Court's Order - and would confirm the pendency of Nintendo's counterclaims.

I spoke to Nintendo's counsel, John Kirby, about this point yesterday, and with his concurrence I propose for your Honor's consideration the entry of a judgment in the form I have annexed to this letter.

Sincerely,

Douglas C. Fairhurst by JCH
DOUGLAS C. FAIRHURST

DCF/st

Enclosure

cc: John J. Kirby, Jr., Esq.

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